Supreme Court, U.S.
FILED
JAN 10 2005
OFFICE OF THE CLERK

(3)

No. 04-671

IN THE
Supreme Court of the United States

VanGuilder v. USA and NY

Petition for Rehearing
Rule 44(2)

To the U.S. Court of Appeals, District of Columbia
And to the New York State Court of Appeals

Edward VanGuilder, *pro se*
241 Fox Road
N. Granville, NY 12854
(518) 642-2448

GROUNDS

(1). My petition went to judicial conference January 7, 2005. Today's Order List records the fact of denial.

(2). Until today there was not yet available a final decision of the NYCA as well as of the USCA. *Certiorari* may have been denied for lack thereof. Appendix 2a. Pet's 2nd Supp. Brief E.V

(3). Secondly, the Court's administration knowingly withheld from the said conference evidence of its own *ultra vires* and *mala fides* abuse of the administration's unfettered discretion to reject. Rule 1(1). Appendix 3a-10a.

BOOKLET APPENDICES

Petitioner's 2nd Supplemental Petition	1/10/05
Motion of Petitioner	1/3/05
Amicus Application	12/1/04
Bill of Complaint Motion	12/1/04

BRIEF

(1). This Court labors under a positive duty to apprehend the *de facto* negation in practice of the *de jure* Indian sovereignty.

(2). The subornation of the bench by the administration's suppression of evidence and argument demonstrates the *modus operandi* for the genocide by chicanery of the Indian race.

(3). The administration places itself above the Constitutional Law by suppressing its exposition.

(4). The root of this genocide by chicanery in North America in abrogation of the rule of law was identified by Columbia University Law Professor Joseph H. Smith, *Appeals to the Privy Council form the American Plantations,* New York, Columbia University Press, 1950, pp. 417-25, 461-63:

> **This [*Mohegan Indians v. Connecticut*] case affords an extreme example of the difficulties faced in enforcing an unpopular adjudication against a colony enjoying quasi-sovereignty. Yet**

the cause is distinguishable in its difficulties in that one party, the Mohegans, although juristically regarded as sovereign, did not enjoy *de facto* sovereignty.

(5). The rule of law does not exist if the Indians' *de jure* sovereignty continues as it has *de facto* to be unenforceable due to the fact court administrators upon procedural pretexts preempt constitutionally critical substance from judicial resolution, with arguably genocidal consequence, in utter abrogation of the Rule of Law

(6). This Court held in *Scott v. Sandford,* 19 How. 393 (1857) (Petition Appendix 15a), that in 1789 the *Constitution* recognized 3 differing qualities of citizenship based specifically upon race. The African race in North America had inferior constitutional status. This Court held that could not be changed by the Federal Government but only in virtue of a Constitutional Amendment. The express and explicit Reason for Judgment was the Federal Government constitutionally has

only enumerated power rather than sovereign (or "plenary") residual jurisdiction to do what ever else it wants (especially to Indian sovereigntists). Absolutely, the Federal Government is not sovereign in relation to the previously vested constitutional status attached to any of the 3 founding races.

(7). This Court explained that in contrast with the Black race the Indian race occupied a superior rather than an inferior constitutional position. Since the Indians were here first and organized under their own Indian Governments operating "subject to" their own Indian Constitutions, therefore by operation of International and Constitutional Law alone the Indian Constitution the *Kaianereh'ko:wa* and my Mahican Constitution still govern virtually the whole of New York State, inclusive of the lands unconstitutionally to be set apart for casino purposes by settling contrived litigation between the Federal Government and its puppet "Indian" Governments organized under and "subject to" Federal Law.

(8). Every time this Court lets in another such contrived case, and they are legion, the end of the genocide is postponed.

(9). The Constitutional Question asked and answered by Thomas, J., in *U.S. v. Lara,* 541 US ____ (2004) (Petition pp. i and ii), released my sovereign People, and the sovereign People of our ally the sovereign Kanion'ke:haka Kanon'ses:neh under the *Kaianereh'ko:wa,* from the terror of the genocide. We cannot believe he would let us be put back under. He can not have been informed. We have to believe that. He is the only hope.

CONCLUSION

(1). *Certiorari* is justified.

January 10, 2005. **Respectfully submitted,**

/s/_____
Edward VanGuilder

Appendix

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VanGuilder v. USA and NY

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Kanion'ke:haka Kaianereh'ko:wa Kanon'ses:neh
Route 14, P.O. Box 1016, Akwesasne, Kanion'ke:haka [13655]TDC (518)
phone 358-6012 and fax 358-6007

December 1, 2004

Hon. William K. Suter
Office of the Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543-0001

Attention: Ann McCamey, Case Analyst

Dear Hon. Clerk of the Court:

- **Re: *Kahentinetha v. USA and NY,* Application for Leave to File Bill of Complaint**
- **And Re: *Amicus* Brief of Kahentinetha in *VanGuilder v. USA,* No. 04-671.**

Enclosed for filing please find (originals plus 40 copies of each of) the above, the affidavits of service and the $600 court fee.

Kanion'ke:haka
Kaianereh'ko:wa
Kanon'ses:neh
pro se
per: /s/
Kahentinetha
/s/
Io ke ron onh

Kanion'ke:haka Kaianereh'ko:wa Kanon'ses:neh
Route 14, P.O. Box 1016, Akwesasne, Kanion'ke:haka [13655]TDC (518)
phone 358-6012 and fax 358-6007

December 13, 2004

Hon. William K. Suter
Office of the Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543-0001

Attention: Ann McCamey, Case Analyst
Re: *Kanion'ke:haka v. NY and USA*, Motion for Leave to File Bill of a Complaint No. 04-(*not assigned*); and,
Re: *Amicus* Brief of (Name) in right of Kaienerekowa in *VanGuilder v. USA*, Petition for *Certiorari* No. 04-671.

Dear Hon. Clerk of the Court:

Earlier today we received in the mail copies of a two page letter with accompanying one page waiver to you from the AGNY. The said waiver has no court file number and is between us and NY and USA which suggests the waiver relates to our motion for leave to file a bill of complaint, the first file captioned above. But then the waiver goes on to describe us as "(Petitioner)" which we are not, anywhere; and the operative clause waives the right to respond to "the petition for certiorari...." Our question is, to which if either Supreme Court file above does the waiver relate?

Yours very truly,

/s/
Kahentinetha and/or Io ke ron onh

Encl.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

December 27, 2004.

Kahentinetha
Route 14, P.O. Box 1016
Akwesasne, NY 13655

Dear Mr. Kahentinetha:

The *amicus* brief in the above entitled-case was postmarked December 4, 2004 and received and is herewith returned for the following reason(s):

You must be a member of the Supreme Court Bar to file a document in this Court. See Rule 9 of the Supreme Court Rules. Only parties to a case may file "pro se".

Written consent from all the parties is required to file an *amicus* brief. If you cannot obtain consent you must file a motion for leave to file an *amicus curiae* brief with the Court. See Rule 37 of the Supreme Court Rules.

A sample amicus brief is enclosed. Pursuant to Rule 37, the brief must include (page 1) Interest of the amicus, Summary of the argument, Argument, and Conclusion. The conference date on which the case 04-671 will be considered is January 7, 2004 [sic]. Should you wish to resubmit an amicus brief, it must be received before that date.

Thank you for your interest. You may follow the progress of the case on our website, www.supremecourtus.gov

Sincerely,
William K. Sutter, Clerk
By:/s/_____
E. Kathleen Tycz
(202) 479-2923

Enclosures

Kanion'ke:haka Kaianereh'ko:wa Kanon'ses:neh
Route 14, P.O. Box 1016, Akwesasne, Kanion'ke:haka [13655]TDC (518)
phone 358-6012 and fax 358-6007

BY OVERNIGHT COURIER ASAP: LIFE AND DEATH ISSUE

December 31, 2004

Hon. William K. Suter
Office of the Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543-0001

Attention: E. Kathleen Tycz

Re: *Kahentinetha v. USA and NY,* Application for Leave to File Bill of Complaint
And Re: *Amicus* Brief of Kahentinetha in *VanGuilder v. USA,* NO. 04-671.

Dear Hon. Clerk of the Court:

Earlier today we received short notice from your office by letter dated December 27, 2004, acknowledging ours postmarked December 4th and informing us we only have until January 7th to re-submit in order to be considered in relation to Petition for *Certiorari* No. 04-671 since,

> **"Pursuant to Rule 37,** [sub-rule not identified] **the brief must include (page 1) Interest of the amicus, Summary of argument, Argument, and Conclusion."**

The brief you rejected consists in those headings; prefaced only by the *Notice of Motion* stipulated for by Rule **37.2**. Since **Rule 37.6** stipulates for the *Disclosure* statement on page 1, therefore the rest of the headings could not physically fit on page 1. They are on pages 2 and 3. The conference will be improperly and prejudicially convened in relation to the petition and supplemental brief if our *amicus* brief and our original action motion are not before the Panel. Whether or not they are "filed" they are incorporated by reference **(page 2 of supplemental brief)**. Therefore we fail to see a procedural justification for not informing the Court of our material at the conference January 7th.

Secondly, **Rule 9** itself is a rule of procedure. The conflict of interest under which the legal profession labours in relation to the Kaianereh'ko:wa historically has precluded any lawyer being ready, willing and able genuinely to represent our constitutional position. All lawyers through whom we are forced to speak invariably compromise our legal point. Under the Kaianereh'ko:wa Constitution backed by the U.S. Constitution justice can not be done if the combined constitutional law can be preempted from consideration.

Kanion'ke:haka
Kaianereh'ko:wa
Kanon'ses:neh, *pro se*

per:

/s/ _____
Kahentinetha

/s/ _____
Io ke ron onh

Encl. All booklets re-returned herewith.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

January 3, 2005

Kahentinetha
Route 14, P.O. Box 1016
Akwesasne, NY 13655

Dear Mr. Kahentinetha:

Your motion for leave to file and original proceeding under Article III of the Constitution was received and is hereby returned for the following reason(s):

The original jurisdiction of this Court does not extend to a suit by an individual against a State. The original jurisdiction of this Court generally extends only to cases or controversies between two or more states or between the United States and one or more states. See 28 U.S.C. 1251 and Rule 17 of the Rules of this Court. The Eleventh Amendment amends the language of the Constitution and holds that the Judicial Power of the United States does not extend to any suit commenced or prosecuted against a state by a citizen of another state. The Supreme Court has subsequently held numerous times that states cannot be sued without their consent and that the Eleventh Amendment bars suits brought against a state by citizens of that state. *Hans v. Louisiana*, 134 U.S. 1 (1890).

Your two money orders, each in the amount of $300 are herewith returned to you.

Sincerely,
William K. Sutter, Clerk
By:
/s/_____
Cynthia Rapp
(202) 479-3031

Kanion'ke:haka Kaianereh'ko:wa Kanon'ses:neh
Route 14, P.O. Box 1016, Akwesasne, Kanion'ke:haka [13655]TDC (518)
phone 358-6012 and fax 358-6007

January 6, 2005

William K. Suter
Clerk of the Court
PERSONALLY as well as *EX OFFICIO*
Supreme Court of the United States
Washington, D.C. 20542-0001

Re: Criminally rejected *amicus* motion in 04-671 and original action motion

Dear Mr Suter:

Previously our *amicus* application was rejected for not having the very headings that it unmistakably does have and for lack of a certifying lawyer, in circumstances where the point of our (and Justice Thomas's) constitutional question manifestly is the conflict of interest of the legal profession which precludes the conventional representation under Rule 9. Substance precludes application of the rule. The alternative is treason, fraud and genocide contrary to the Constitution of the United States. Therefore, we returned to you our *amicus* motion for reassessment in the light of these special, and indeed extraordinary circumstances.

Then, earlier today, your office returned our original action motion and the fees for both it and the *amicus* motion, all of which is again being sent back to you by overnight courier so that it will be available for the Court's

conference in relation to *VanGuilder v. USA and NY* 04-671 TOMORROW January 7th. Your assistant mis-identified our motion *qua* "foreign State" as if it were a motion by an "individual." This is the type of fraud by the legal establishment that contradicts the existence of the rule of law upon which our constituents now depend, to rescue them from the genocide caused by the denial of the constitutionally binding force and effect of our Kaianereh'ko:wa.

Please let the Court decide. Obstruction is genocidal as well as unconstitutional.

Yours very truly,

/s/_____

Kahentinetha and/or Io ke ron onh
in right of Kanion'ke:haka Kaianereh'ko:wa
Kanon'ses:neh (a "foreign State")

Encl.